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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------|
| 10/787,057 | 02/25/2004 | Gregory H. Lambrecht | VIA-3 CON (MT10900/US/2) | 9535 |
| 33072 | 7590 | 09/11/2007 | EXAMINER | |
| KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082 | | | STROUD, JONATHAN R | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3709 | |
| | | | MAIL DATE | DELIVERY MODE |
| | | | 09/11/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/787,057

Applicant(s)

LAMBRECHT ET AL.

Examiner

Jonathan R. Stroud

Art Unit

3709

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) ³⁸~~1-38~~ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) ³⁸~~1-38~~ is/are objected to.
- 8) ☒ Claim(s) ~~1-38~~ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. This application contains claims directed to the following patentably distinct species:

Apparatus:

Group I, species A, combined valve and filter deployment system, drawn to figs. 6, 7A-7D;

Group I, species B, combined valve and filter deployment system II, drawn to figs. 8A & 8B;

Group I, species C, combined valve and filter deployment system III, drawn to figs. 9A & 9B;

Group I, species D, combined valve and filter deployment system IV, drawn to figs. 10A & 10B;

Group I, species E, combined valve and filter deployment system, drawn to figs. 11A & 11B;

And the following patentably distinct subspecies:

Group II, species A, temporary filter, drawn to figs. 1A-1F;

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Group II, species B, temporary filter, drawn to figs. 2A-2C;

Group III, species A, valve fixation device, drawn to figs. 17 A-D;

Group III, species B, valve fixation device, drawn to fig. 17 E.

Group IV, species A, valve 111, drawn to para. [0105];

Group IV, species B, valve 111, drawn to para. [0106];

Group V, species A, valve assembly 100, drawn to para. [0101];

Group V, species B, valve assembly 100, drawn to para. [0102];

Method:

Group I, species A, method of surgery, drawn to fig. 18;

Group I, species B, method of surgery II, drawn to fig. 19;

Group I, species C, method of surgery III, drawn to fig. 24.

And the following patentably distinct subspecies:

Group II, species A, method of using the valve described in figures 12-14, drawn to para. [0107];

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Group II, species B, method of using the valve described in figures 12-14 II,
drawn to para. [0108]:

Group II, species C, method of using the valve described in figures 12-14 III,
drawn to para. [0109]:

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Specifically, applicant is required to elect for prosecution at this time one of (apparatus) IA or IB or IC or ID or IE together with one of IIA or IIB together with one of IIIA or IIIB together with one of IVA or IVB together with one of VA or VB, and also one of (method) IA or IB or IC together with one of IIA or IIB or IIC.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after

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the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan R. Stroud whose telephone number is 571-270-3070. The examiner can normally be reached on Monday through Friday, 7:30 a.m. to 5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on (571) 272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jonathan Stroud/


KIMBERLY S. SMITH
PRIMARY EXAMINER
9/6/07